

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department on its own)
Motion as to the propriety of the rates and)
charges set forth in M.D.T.E No. 17, filed with)
the Department on May 5, 2000 to become) D.T.E. 98-57, Phase III
effective June 4 and June 6, 2000 by New)
England Telephone and Telegraph Company)
d/b/a Bell Atlantic – Massachusetts)

BRIEF OF COVAD COMMUNICATIONS COMPANY

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Covad Communications Company (“Covad”), through undersigned counsel,
hereby submits its brief in the above-captioned matter.

INTRODUCTION

The crux of this case is that Covad seeks to be able to provide xDSL services over Verizon’s Litespan 2000 digital loop carrier (“DLC”) under the same terms and conditions that Verizon (or its affiliates) can provide such services. There are two path ways to offering xDSL services over the Litespan 2000 platform:

- (1) Option 1: If Verizon purchases and deploys the equipment that enables Litespan 2000 DLC to provide xDSL services (hereinafter “Litespan 2000 DSL Equipment”), Covad would lease stand-alone or line shared loops that travel over that Litespan 2000 equipment and offer xDSL services over them.
- (2) Option 2: Covad could deploy its own Litespan 2000 DSL Equipment in Verizon’s RTs, lease the loops that travel over that equipment and offer xDSL services over them.

There are three primary legal issues in this case: (1) Can Verizon’s Litespan 2000 DSL Equipment be unbundled under federal law, so that Option 1 is available?

(2) In any event, can Covad place its own Litespan 2000 DSL Equipment in Verizon’s RTs, consistent with Option 2? Covad argues below that, although the

answer to question 1 is currently that unbundling is not required, Covad argues that the Department should not make any permanent finding in that regard, given the fluid nature of the circumstances. On question 2, Covad argues that Verizon would have things both ways: in the event that it deploys Litespan 2000 DSL equipment at RTs, it would simultaneously deny Covad the right either to collocate the same equipment and to unbundle Verizon's equipment. The Department should not sanction Verizon's Catch-22 strategy.

There are also operational issues associated with the illustrative tariff ("the Tariff") that Verizon filed in this case. Because it neither would be efficient nor effective to resolve such issues in this case, Covad recommends that the Department require Verizon to negotiate these issues in the context of a collaborative.

ARGUMENT

I. LEGAL ISSUES

A. The Fact that the FCC's Packet Switching Unbundling Conditions Are Not Currently Met Does Not Preclude Them From Being Met in the Future

Under federal law, Verizon's packet switching capability is a network element subject to unbundling if four conditions are met. These conditions seek to ensure that Verizon and its competitors operate on a level playing field in selling packet switching-based services. Summarized briefly, the law subjects packet switching to unbundling requirements under 47 U.S.C. § 251(c)(5) if

- (1) an RT (or similar enclosure) is served by digital loop carrier;
- (2) Verizon deploys packet switching equipment in that RT;

- (3) there are no xDSL compatible copper loops to serve customers from that RT; and
- (4) CLECs cannot place their own DSLAMs in the RT on the same terms and conditions as Verizon can.¹

In other words, the law unbundles packet switching equipment when necessary to ensure that Verizon does not have a monopoly over the RT.

Verizon claims that it has not placed any packet switching equipment in RTs, which precludes the four conditions from being satisfied.² While Verizon's RTs may be currently free of such equipment, there is no telling how long that will be the case. If the situation changes in the future, the Department will need to re-examine the four conditions. For that reason, the Department should not make any sort of permanent ruling in this case that the four conditions are unsatisfied.

B. Verizon Would Have It Both Ways In Seeking to Deny Covad Option 2

While Verizon vigorously argues that its Litespan 2000 DSL Equipment cannot be unbundled under 47 C.F.R. 51.319(c)(5), it denies that Covad has any right to collocate such equipment (either physically or virtually) in an RT. Verizon argues that Litespan 2000 DSL Equipment is not "equipment" within the meaning of the FCC's collocation rules and, on that basis, asserts that Covad has no right to collocate

¹ *Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, at ¶ 313 (rel. November 5, 1999) ("UNE Remand Order").

² See Testimony of Paul Richard and Michael Nawrocki, at 10-11, 13 (May 22, 2001) ("Verizon Testimony").

it at RTs.³ Rather, Verizon insists that Covad must deploy a stand-alone DSLAM either in the RT or, if there is no space, in a shed built around the corner.⁴

Verizon wants to have it both ways. Either Litespan 2000 DSL Equipment can be unbundled or competitors are entitled to collocate it in Verizon's RTs. That is the entire point of 47 C.F.R. § 51.319(c)(5) (*i.e.*, to make sure that competitors have some way of providing DSL to end users served over RTs).

Moreover, if the Department were to buy Verizon's contention that Litespan 2000 DSL Equipment is not "equipment" eligible for collocation under FCC rules, it would eviscerate the right of CLECs under the *UNE Remand Order* to place DSLAMs in RTs on the "same terms and conditions" as Verizon:

The incumbent will be relieved of this [packet switching] unbundling obligation only if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM.⁵

Since Verizon plans to place DSLAMs in RTs by putting them on line cards that plug into Litespan 2000 DLC units, Covad and other CLECs have the right to do the same. The Department should not credit Verizon's self-serving argument that line cards are not eligible for collocation.

II. OPERATIONAL ISSUES: THE ILLUSTRATIVE TARIFF AND THE UNDERLYING PROCEDURES ARE NOT READY

At the Department's direction, Verizon filed the illustrative Tariff, which purports to provide terms and conditions for both the collocation of CLECs'

³ See Rebuttal Panel Testimony of Verizon Massachusetts, at 9-10 (September 19, 2001) ("Verizon Rebuttal").

⁴ See Verizon Testimony, at 13.

Litespan 2000 DSL equipment in RTs as well as the unbundling of such equipment owned by Verizon. While the Tariff makes some strides in the right direction, it is not sufficient to ensure that, if Verizon deployed Litespan 2000 DSL Equipment in RTs tomorrow, CLECs would have an equal opportunity to collocate their own equipment there as well.

There are numerous unresolved issues, as Verizon's responses to Covad's discovery requests show. For example, Verizon does not know:

- (1) the maintenance window for performing work on Litespan 2000 equipment that contains CLEC-owned line cards (CVD-VZ-2-2);
- (2) what procedures it will apply to determine whether CLEC line cards can be added to the list of approved equipment (as discussed in Section 1.1.1.D.2.a of the Tariff) (CVD-VZ-2-3);
- (3) how it wants CLECs to manage the inventory of line cards to be collocated in RTs (CVD-VZ-2-4);
- (4) how it will return unused line cards to the inventory (CVD-VZ-2-8); and
- (5) what process will govern the waiving of termination liability (imposed under Sections 1.5.1 & 1.5.2 of the Tariff) if CLEC disconnections result from provisioning delays beyond the CLEC's control and/or are caused by Verizon (CVD-VZ-2-5).

Covad does not believe that the Department can decide such operational issues in this case. Instead, the parties should negotiate them in the context of a collaborative proceeding. While past collaboratives on DSL-over-fiber issues in other states have made scant progress, there is good reason to believe that Massachusetts will be different. Verizon has a strong incentive to resolve operational issues in a Massachusetts collaborative because it cannot offer retail DSL-over-fiber service until

⁵ UNE Remand Order, at ¶ 313.

CLECs are able to do so also. As the Department found in an earlier portion of the proceeding:

[S]ince, by their very nature, tariff proceedings are time consuming, we find that it would be fundamentally unfair to CLECs, and to consumers, to allow Verizon's data affiliate . . . to deploy the technology that would allow plug and play, or to deploy the "infrastructure to support wholesale packet transport services from [Verizon's] RTs," *and only then file with the Department a proposed tariff offering for CLECs to do the same.*⁶

Plainly, the Department has prohibited Verizon from offering retail DSL-over-fiber services until CLECs have a valid, effective tariff under which they could collocate their own line cards and offer competing retail services. There is no question that Verizon would have to take a collaborative in Massachusetts seriously or run the risk of having its roll-out of retail DSL-over-fiber services delayed. Toward that end, Covad stands ready to negotiate these issues as soon as Verizon wants.

⁶ See *Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000*, DTE 98-57 Phase III, at 88-89 (September 29, 2000) (emphasis added) (internal citations and footnotes omitted).

CONCLUSION

For the foregoing reasons, the Department should adopt the recommendations set forth above.

Respectfully submitted,

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